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OFFICE OF PETITIONS

In re Application of :
Freskos, et al. : DECISION ON APPLICATION FOR
Application No. 10/657,034 : PATENT TERM ADJUSTMENT
Filed: September 5, 2003 :
Atty. Dkt. No.: 3316/0A/US :

This is a decision on the "Application for Patent Term Adjustment under 37 CFR 1.705(b)" filed October 21, 2004.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED**.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an applicant delay of zero days. A copy of the updated PAIR screen showing the correct determination is enclosed.

A Notice of Allowance in the above-identified application was mailed July 21, 2004. The Determination of Patent Term Adjustment indicated a PTA of zero days as of the time of Allowance. Review of the application history reveals that a delay of 71 days has been attributed to applicants for submission of a supplemental response on July 15, 2004. Applicants, however, argue that this period of delay is in error and that there has been no failure to engage in reasonable efforts to conclude prosecution. Applicants have brought forth the instant application for patent term adjustment in the event that an adjustment is accorded at the time of issuance of the patent.

Applicants argue that the supplemental response submitted July 15, 2004 was submitted in response to a restriction requirement imposed by the examiner telephonically on July 15, 2004.

The record of proceedings in this matter supports applicants' contention that the supplemental response was expressly requested by the examiner. In accordance with 37 CFR 1.704(c)(8), a supplemental response that has been expressly

requested by the examiner does not constitute a failure by applicant to engage in reasonable efforts to conclude prosecution. Therefore, the 71-day delay indicated in PAIR system is in error, as argued by applicants.

The period of patent term adjustment remains zero as set forth in the Determination of Patent Term Adjustment.

Receipt is hereby acknowledged of the required application fee of \$200.00.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

*Karin Ferriter
for*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation